IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6521 of 2005

State Bank of India Petitioner

versus

M/s.Beauty Art Dyers and
Cleaners Pvt. Ltd. Respondents

Mr.A.H.Palekar i/by S. Ashwinikumar & Co. for petitioner.

Smt.Ranjana Parikh for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th February 2006

PC :

1. Heard Shri Palekar appearing for the petitioners and Ms.Parikh appearing for the respondents-original plaintiffs.

2. Shri Palekar appearing for the petitioners submits that the petitioners-original defendants are a Nationalised Bank and although they have lost protection of the Maharashtra Rent Control Act, 1999, yet, the provisions of Transfer of Property Act, 1882 would apply to the subject

lease. In the subject lease agreement, there is a clause {clause 8(g)} which specifically contemplates renewal on the terms and conditions stipulated therein. He submits that there is a letter addressed by the Advocates appearing for respondents-owners on 13th June 2000 and subsequently on 3rd August 2000. The bank may not have replied to these letters but the contents of the letters themselves disclose that the respondents have accepted that the petitioner bank has a right of renewal under the abovementioned clause, and therefore, by accepting payments till the dates stipulated in the above clause, the benefit of Section 107 of the Transfer of Property Act, cannot be denied to the petitioner bank. The suit filed for possession was clearly premature and could not have been decreed by the Courts below.

3. The above submissions really invite me to reappreciate and reappraise the factual materials which cannot be done in my limited jurisdiction under Article 227 of the Constitution of India.

4. The Trial Court as well as the Lower Appellate Court while decreeing the suit preferred by the respondents for possession, have

specifically adverted to the fact that the benefit of the abovementioned clause as well as statutory provisions cannot be extended to the petitioner bank because there is no written request for renewal or a written instrument evidencing renewal of the lease. It is very clearly mentioned by the Lower Appellate Court in para 28 of the impugned order that benefit of the abovementioned provision as well as Section 53A of the Transfer of Property Act cannot be extended merely on the strength of some letters. The terms and conditions agreed upon between parties and more particularly the clause in question, according to the Courts below, cannot be nullified by placing reliance on the aforesaid letters. There is no fresh lease deed admittedly in this case.

5. It is inconceivable that parties would go by some oral requests and some oral discussions which do not meet the requirement of the above clause.

6. The Courts below have appreciated the materials in the light of the abovementioned stipulation as also the provisions of Transfer of Property Act and concurrently found that

termination of the authority of the petitioner-bank to occupy the premises in question has been rightly put to an end to and that petitioner should vacate the premises. The decree of eviction having been passed on the admitted basis that no other protection can be extended, in my view, the request of Shri Palekar to once again consider the materials, cannot be accepted in my limited jurisdiction.

7. Petition summarily dismissed.

8. However, at the request of Shri Palekar, the decree for possession passed in favour of the respondents, would not be executed till 28th February 2007 provided the petitioner executes in the Trial Court an undertaking incorporating the following :-

A) That the petitioner is in possession of the said premises;

B) That the premises are being used as a Branch Office;

C) That petitioner will not create any third party rights or part with possession of the same

till the above period i.e. 28th February 2007;

D) That it would hand over vacant and peaceful possession of the said premises on expiry of the aforementioned period.

9. If such an undertaking is filed within a period of two weeks from today, the Trial Court not to execute the decree in question. Needless to state that if no such undertaking is filed within the period stipulated, the respondents can proceed to execute the decree in accordance with law. Liberty to apply.

(S.C.DHARMADHIKARI, J.)